

REMARKS

Undersigned counsel for Applicants thanks Examiner Navarro for extending the courtesy of a telephone conference on May 25, 2006 to discuss the outstanding Office Action and the contents of this Response. Details of the conversation are summarized below.

Status of the claims

Claims 1, 2, 5-8, 13-16, 27, 29, 35, 40, 52-54 and 57-64 were pending in this application with claims 13-16, 27, 29, 35 and 40 withdrawn from active consideration. With this Response, claims 1 and 59 have been amended; claim 64 has been canceled; and claims 65 and 66 have been newly added. Upon entry of these amendments, therefore, claims 1, 2, 5-8, 13-16, 27, 29, 35, 40, 52-54 and 57-63, 65 and 66 will be pending and under active consideration.

Applicants respectfully request entry of the amendments and remarks made herein into the prosecution history of the present invention. Reconsideration and withdrawal of the rejections set forth in the above-identified Office Action is respectfully requested.

Claim rejections under 35 U.S.C. § 101

Applicants first thank the Examiner for withdrawing the § 101 rejection of claims 58 and 60-63 in light of Applicants' introduction of the term "isolated" to the said claims. Claim 59, however, was not similarly amended and the rejection was traversed for reasons of record. The Examiner has found Applicants' arguments unpersuasive and has therefore maintained the § 101 rejection of claim 59. Accordingly, solely in the interest of speeding prosecution, Applicants have amended claim 59 herewith to recite the term "isolated." Applicants respectfully submit that the instant rejection has been overcome and respectfully request the withdrawal of same.

Claim rejections under 35 U.S.C. § 112, first paragraph

Claims 1-2, 5-8, 52-54 and 59-64 stand rejected under 35 U.S.C. 112, first paragraph for want of written description. In brief, the Examiner alleges that open-ended claims to SEQ ID NO: 1m which is a 43 amino acid fragment, do not meet the written description guidelines set

forth in the Federal Register, Vol. 64, No. 244, pages 71427-71440, Tuesday December 21, 1999. Even though SEQ ID NO: 1 is to that of a *peptide*, the Examiner nonetheless asserts that without providing a start codon and a stop codon for translation, “Applicants have only provided support for the specifically identified fragment, i.e., ‘consisting of SEQ IS NO: 1.’”

Applicants respectfully traverse this rejection, asserting that the USPTO’s interpretation and application of the written description requirement under 35 U.S.C. § 112, first paragraph, is improper in the present case and cannot withstand judicial review. In any event, the Examiner has indicated by telephone that the present claims will not be allowable according to present USPTO practice. Accordingly, Applicants have amended claim 1 to strike “SEQ ID NO: 1.” Applicants stress that the instant amendment has been entered solely to speed prosecution of the instant application, and therefore should not be viewed with prejudice to prosecution of the canceled subject matter in a continuation application. The amendment to claim 1 ought to render the rejections of the claims that depend therefrom (1-2, 5-8, 52-54 and 59-63) moot. As well, claim 64 has been canceled without prejudice or disclaimer.

Taken together, Applicants respectfully submit that the instant claimed invention is adequately described under 35 U.S.C. § 112, first paragraph. Accordingly, Applicants hereby kindly solicit withdrawal of same rejections.

Objections to the specification

As a final matter, the Examiner has objected to introduction of the phrase “incorporated by reference to the extent allowed by law” to the specification for the reasons of record. Applicants have struck this language with this Response. Accordingly, Applicants submit that the rejection is now moot and respectfully solicit withdrawal of same.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date May 26, 2006

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4621
Facsimile: (202) 672-5399

By G. Talapat

Gilberto M. Villacorta, Ph.D.
Registration No. 34,038
Sunit Talapatra, Ph.D.
Registration No. 54,482